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1
     JULIAN M. BAUM (CA State Bar No. 130892)
     THOMAS J. FUCHS
 2
     BAUM & WEEMS
     9 Tenaya Lane
 3
     Novato, California 94947
 4
     Telephone: (415) 892-3152
     Facsimile: (415) 892-3096
 5
     Attorneys for Plaintiff
 6
     David Carleton
 7
     RONALD K. ALBERTS (SBN 100017)
 8
     TAD A. DEVLIN (SBN 190355)
     GORDON & REES LLP
 9
     275 Battery Street, Suite 2000
10
     San Francisco, CA 94111
     Telephone: (415) 986-5900
11
     Facsimile: (415) 986-8054
12
     Attorneys for Defendants
13
14
                             UNITED STATES DISTRICT COURT
15
                           NORTHERN DISTRICT OF CALIFORNIA
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     DAVID CARLETON, an individual,
18
                                                 Case No. CV 07-5924 (JSW)
            Plaintiff,
19
                                                 STIPULATION AND [Proposed]
                                                 ORDER on Defendants' Motion to Dismiss
20
     v.
21
                                                Date: May 16, 2008
                                                Time: 9:00 a.m.
     504 GAP, INC. DISABILITY PLANS and
22
                                                Courtroom: Hon. Jeffrey S. White
     THE GAP, INC., in its capacity as Plan
                                                 United States District Judge
23
     Administrator,
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            Defendants.
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The parties jointly submit the following Stipulation and Proposed Order, and respectfully present it for the Court's consideration and approval as a resolution of Defendants' Motion to Dismiss scheduled for hearing on May 16, 2008.

**STIPULATION** 

The parties agree as follows.

- 1. Defendants represent that the defendant ERISA plan is insured, with respect to plaintiff's claim for disability benefits, by a group disability insurance policy issued by The Prudential Insurance Company of America and/or one of affiliated companies or subsidiaries ("Prudential")
- 2. Defendants represent that Prudential agrees that it will pay, on behalf of defendants, any monetary award or relief ordered by the Court in favor of plaintiff in this case, if any, including, but not limited to, disability insurance benefits, prejudgment interest, post-judgment interest, costs, and attorneys' fees and expenses.
- 3. Based on defendants' representations, plaintiff agrees to the dismissal without prejudice of his Second and Third Claims for Relief, and defendants agree to the withdrawal of their pending Motion to Dismiss.
- 4. The parties agree that plaintiff's Second and Third Claims for Relief may be re-asserted if, and only if, neither defendants nor Prudential pay the monetary award or relief (if any) ordered by the Court in this case. The parties further agree that the Court shall retain jurisdiction of this action for purposes of any further proceedings related to this Stipulation and Proposed Order.

21 /// [signatures on following page]

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